

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER BERITICH,

Plaintiff,

v.

MULTICARE HEALTH SYSTEMS, et
al.,

Defendants.

CASE NO. C15-5370 BHS

ORDER GRANTING
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND
COMPLAINT

This matter comes before the Court on Plaintiff Christopher Beritich's ("Beritich") motion for leave to amend complaint (Dkt. 16). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On May 5, 2015, Beritich filed a complaint in Pierce County Superior Court for the State of Washington. Dkt. 1-1. Beritich asserted claims against Defendants Multicare Health Systems ("MHS") and United Food and Commercial Workers

1 Washington State United Counsel, doing business as “UFCW, Local 21” (“Local 21”)
2 (collectively “Defendants”), for disability discrimination, age discrimination, interference
3 and retaliation for use of protected leave, breach of duty of fair representation, and breach
4 of contract. *Id.*

5 On June 3, 2015, Defendants removed the matter to this Court. Dkt. 1.

6 On June 11, 2015, Beritich filed an amended complaint adding a claim for
7 wrongful termination against MHS. Dkt. 6.

8 On October 2, 2015, the Court issued a scheduling order setting November 12,
9 2015 as the deadline for amended pleadings. Dkt. 15.

10 On December 10, 2015, Beritich filed a motion to amend his complaint to add
11 federal claims for disability and age discrimination. Dkt. 16. On December 21, 2015,
12 Defendants responded. Dkts. 18 & 20. Beritich did not reply.

13 II. DISCUSSION

14 Rule 16 provides that once the court enters a scheduling order it “may be modified
15 only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Thus, the
16 “good cause” standard of Rule 16 governs Beritich’s motion to amend and not the more
17 liberal Rule 15 standard. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–
18 08 (9th Cir. 1992) (“Once the district court had filed a pretrial scheduling order pursuant
19 to Federal Rule of Civil Procedure 16 which established a timetable for amending
20 pleadings that rule’s standards controlled.”).

1 In this case, the parties dispute whether Beritich has diligently pursued his claims.¹
2 Beritich argues that he received his right to sue letter from the Equal Employment
3 Opportunity Commission (“EEOC”) on November 23, 2015 and filed this motion shortly
4 thereafter. MHS argues that Beritich could have added his age discrimination claim
5 without waiting for an EEOC letter and could have requested a decision from the EEOC
6 earlier so that he could have met the Court’s deadline to amend pleadings. Dkt. 20 at 4–
7 6. While Beritich may have requested an EEOC determination sooner and may have met
8 the Court’s deadline, Beritich was aware of the deadline and set in motion the issuance of
9 the EEOC determination and right to sue letter. In these circumstances, the Court is
10 unable to conclude that Beritich was not diligent when he missed the deadline by only a
11 few days. Therefore, the Court concludes that Beritich has shown good cause to modify
12 the scheduling order to extend the amended pleadings deadline.

13 With regard to the proposed amendments, the “Supreme Court has instructed the
14 lower federal courts to heed carefully the command of Rule 15(a), F[ed].R.Civ.P., by
15 freely granting leave to amend when justice so requires.” *Gabrielson v. Montgomery*
16 *Ward & Co.*, 785 F.2d 762, 765 (9th Cir. 1986) (citations omitted). In considering
17 whether to permit an amended pleading, courts consider the following factors: “(1) bad
18 faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and
19 (5) whether plaintiff has previously amended his complaint.” *Allen v. City of Beverly*
20 *Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Courts should not grant leave to amend where

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22 ¹ Although not labeled as such, the Court will regard Beritich’s motion as an implicit
motion to extend the Court’s deadline to amend pleadings. *Johnson, Inc.*, 975 F.2d 604 at 608.

1 amendment would be futile. *See Klamath–Lake Pharm. Ass'n v. Klamath Med. Serv.*
2 *Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983).

3 In this case, MHS argues that Beritich unduly delayed amending his complaint and
4 the claims are duplicative. Dkt. 20 at 7. The Court declines to find any undue delay,
5 even if Beritich could have added the age discrimination claim while the EEOC was
6 investigating the claim. Similarly, the Court is unable to conclude as a matter of law that
7 the federal claims are duplicative of the state claims. Therefore, the Court grants
8 Beritich's motion to add federal claims against MHS.

9 Finally, Local 21 argues that the Court should deny Beritich's motion with respect
10 to any federal claims against Local 21. Dkt. 18. Although Local 21's arguments have
11 merit, a fair reading of Beritich's complaint establishes that Beritich only seeks leave to
12 add federal claims against MHS. Dkt. 16 at 15, ¶¶ 3.1.1–3.1.2. Thus, Local 21's
13 opposition is moot.

14 III. ORDER

15 Therefore, it is hereby **ORDERED** that Beritich's motion for leave to amend
16 complaint (Dkt. 16) is **GRANTED**. Beritich shall file the proposed amended complaint
17 as a separate document on the electronic docket.

18 Dated this 20th day of January, 2016.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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